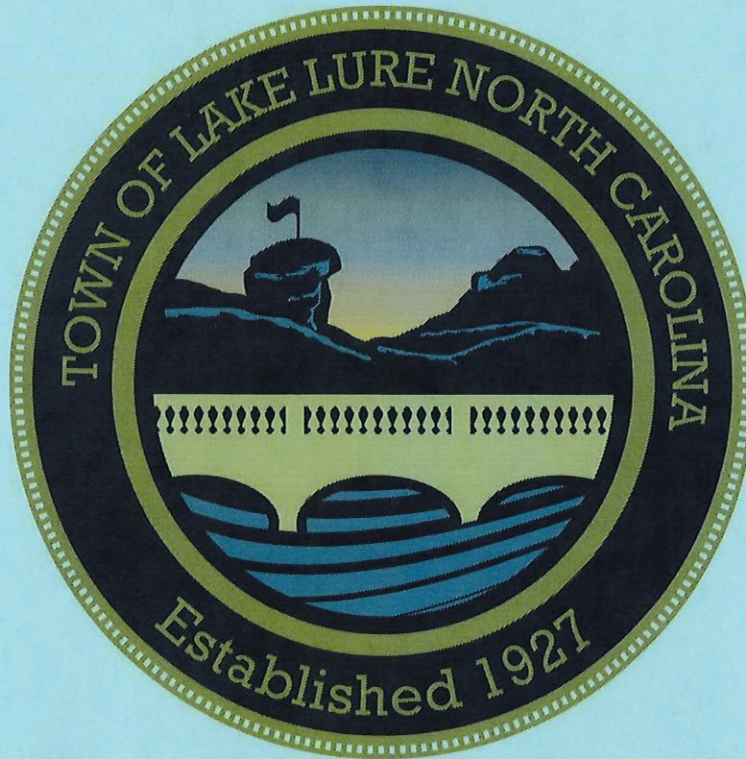


LAKE LURE MARINE COMMISSION REGULAR MEETING PACKET

Tuesday, March 12, 2019



Mayor Kevin Cooley

Mayor Pro Tem John Moore

Commissioner Bob Cameron

Commissioner Stephen M. Webber

Commissioner John Kilby



REGULAR MEETING OF THE LAKE LURE MARINE COMMISSION

*Tuesday, March 12, 2019
4:00 P.M.
Lake Lure Municipal Center*

AGENDA

1. Call to Order
2. Invocation
3. Approve the Agenda
4. Public Forum: *The public is invited to speak on any non-agenda and/or consent agenda topics. Comments should be limited to less than five minutes.*
5. Public Hearing - Resolution No. 19-03-12 of the Town of Lake Lure Marine Commission Amending the Lake Use Regulations.
6. Consent Agenda:
 - A. Adoption of the December 11, 2018 Regular Meeting Minutes
7. New Business:
 - A. Proposed Resolution No. 19-03-12 of the Town of Lake Lure Marine Commission Amending the Lake Use Regulations
 - B. Request from Dan Breneman to Appeal a Decision of the Lake Advisory Board
 - C. Recommendation from the Lake Advisory Board to Allow Complimentary Boat Permits for Town of Lake Lure Retirees
8. Adjournment

PUBLIC HEARING

LAKE LURE MARINE COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: March 12, 2019

SUBJECT: Resolution No. 19-03-12 - Proposed Amendments to the Lake Use Regulations

AGENDA INFORMATION:

Agenda Location: Public Hearings and New Business
Item Number: A
Department: Lake Operations
Contact: Dean Givens, Lake Operations Director
Presenter: Dean Givens, Lake Operations Director

BRIEF SUMMARY: The Lake Advisory Board held a meeting on February 4, 2019 and discussed amendments to the current Lake Use Regulations. They voted 4-2 in favor of a recommendation to the Marine Commission, to amend the Lake Use Regulations to allow for specialized equipment/vessels for prorated temporary use on the lake for construction purposes. They directed the Marine Commission to review and adopt the proposed changes to the Regulations.

RECOMMENDED MOTION AND REQUESTED ACTIONS: To adopt Resolution No. 19-03-12 amending the Lake Use Regulations.

FUNDING SOURCE: None

ATTACHMENTS: Resolution No. 19-03-12

STAFF'S COMMENTS AND RECOMMENDATIONS: A public hearing is scheduled for the March 12, 2019 Marine Commission meeting for discussion of amendments to the current Lake Use Regulations. Staff recommends approval.



RESOLUTION NO. 19-03-12

OF THE TOWN OF LAKE LURE MARINE COMMISSION AMENDING THE LAKE USE REGULATIONS CONCERNING COMMERCIAL TEMPORARY BOAT PERMITS

WHEREAS, the Lake Lure Town Council has created the Lake Lure Marine Commission as authorized by special act of the General Assembly of the State of North Carolina for the purposes of regulating all activities on Lake Lure; and

WHEREAS, the Lake Use Regulations were adopted by resolution on March 9, 2004; and

WHEREAS, the Lake Lure Marine Commission, upon the recommendation of the Lake Lure Lake Advisory Board, has determined that said regulations should be amended to regulate temporary commercial activities on Lake Lure; and

NOW, THEREFORE, BE IT RESOLVED BY THE LAKE LURE MARINE COMMISSION that the following revisions to the lake use regulations are hereby placed in effect and shall be enforced by the Town of Lake Lure:

[Words ~~stricken through~~ to be deleted, words underlined to be added]

SECTION ONE. Amend Section 4.01(D) as follows:

(D) (1) Federal, State and Local governmental agencies are exempt from this Section provided they are operating in an official capacity, including but not limited to training, research, data collection, emergency response, or other service related duties. Complimentary permits will be provided for the dates and times needed to perform their official duties, and will only require a valid registration. Vessel length restrictions shall not be imposed. Vessels permitted under this policy shall not be used for recreational activities. **Adopted 12-13-16**

(2) Contractors that are providing a lake-related service to the Town of Lake Lure under a Town sponsored project, without a boat permit will receive a complimentary boat permit. Permits granted under this section are only valid for the duration of the project. Valid registration and insurance will be required. Vessel length restrictions shall not be imposed. Vessels permitted under this policy shall not be used for recreational activities. **Adopted 12-13-16**

Resolution No. 19-03-12
Lake Use Regulations Amendments
March 12, 2019
Page 2

(3) Contractors that are providing a lake-related construction service for a property owner on Lake Lure that has specialized equipment generally prohibited by the Lake Use Regulations, may apply for a prorated commercial temporary boat permit for a specific job they are contracted for. Permits granted under this section are only valid for the duration of the project and are subject to a commercial license application fee. Valid boat registration and commercial boat insurance will be required in accordance with section 4.07(C) of these regulations. Vessel length restrictions shall not be imposed. Vessels permitted under this policy shall not be used for recreational activities or any other use than approved for. Approval of a commercial temporary boat permit will be at the discretion of the Parks, Recreation & Lake Director.

SECTION TWO. This Resolution shall be in full force and effect from and after the date of adoption.

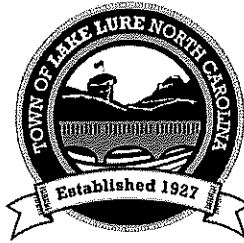
Adopted this 12th day of March, 2019.

ATTEST:

Michelle Jolley, Town Clerk
Marine Commission

Kevin Cooley, Mayor

CONSENT AGENDA



**MINUTES OF THE SPECIAL MEETING OF THE LAKE LURE MARINE
COMMISSION HELD TUESDAY, DECEMBER 18, 2018, 4:00 P.M. AT THE
LAKE LURE MUNICIPAL CENTER**

PRESENT: Mayor Kevin Cooley
Mayor Pro Tem John W. Moore
Commissioner Bob Cameron
Commissioner John Kilby
Commissioner Stephen M. Webber
Shannon Baldwin, Interim Town Manager

ABSENT: N/A

CALL TO ORDER

Mayor Kevin Cooley called the meeting to order at 4:00 p.m.

INVOCATION

Mayor Kevin Cooley gave the invocation and Council members led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

Commissioner Stephen Webber proposed moving the "Boat Slip Leasing Policy" from "Consent" to "New Business." Mayor Cooley noted this would be the first item on "New Business."

Commissioner Bob Cameron made a motion to approve the Agenda as amended. Mayor Pro Tem John Moore seconded and the motion carried 4-0.

PUBLIC FORUM

Mayor Kevin Cooley invited the audience to speak and no one requested to speak at this time.

CONSENT AGENDA

Mayor Kevin Cooley presented the Consent Agenda and asked if any additional items should be removed before calling for action.

Commissioner Stephen Webber made a motion to approve the Consent Agenda, as amended. Commissioner Bob Cameron seconded and the motion carried 4-0. Therefore, the Consent Agenda incorporating the following item was unanimously approved:

- A. Adopt the September 11, 2018 Regular Meeting Minutes.
- B. Adopt the 2019 Meeting Schedule.

LAKE LURE MARINE COMMISSION MEETING SCHEDULE FOR YEAR 2019

<u>DATE</u>	<u>LOCATION</u>	<u>TIME</u>	<u>TYPE</u>
March 12, 2019	Lake Lure Municipal Center	4:00 p.m.	Regular
June 11, 2019	Lake Lure Municipal Center	4:00 p.m.	Regular
September 10, 2019	Lake Lure Municipal Center	4:00 p.m.	Regular
December 10, 2019	Lake Lure Municipal Center	4:00 p.m.	Regular

* Regular Lake Lure Marine Commission meetings are held four times per year during the months of March, June, September, and December on the second Tuesday at 4:00 p.m.

NEW BUSINESS

A. BOAT SLIP LEASING POLICY

Commissioner Webber noted that at the last LLMC meeting, it was discussed that priority three would be combined with commercial boat operators with marine mechanical services and deferred to the LAB. He stated that the LAB did not discuss this during their meeting yesterday. The Board agreed to add commercial marine mechanical services to the priority list.

Commissioner Webber made a motion to adopt the Boat Slip Leasing Policy, as revised with the amendment to paragraph A sub paragraph (3) to add commercial marine mechanical service providers. Commissioner Cameron seconded and the motion carried 4-0.

NEW BUSINESS

A. REQUEST FROM MICHAEL LEWIS TO WAIVE THE \$100 LATE FEE FOR HIS 2019 LAKE COMMERCIAL LICENSE

Mr. Givens reported that the LAB reviewed this request at their last meeting and unanimously recommended to uphold the Town's regulations and to deny Michael Lewis' request to waive the \$100 late fee for his 2019 Lake Commercial License. He mentioned that there have been ten other late applications received in which all paid the \$100 late fee. Mr. Givens stated that he would follow up and make sure that the addresses on file for renewal letters are up-to-date. Commissioner Kilby asked that Mr. Givens also make sure that there is not a guideline in place that states that renewal letters are not required to be sent out. Commissioner Webber suggested keeping late applications on file in case someone comes out of the model. Town Manager Shannon Baldwin stated that he and Mr. Givens would discuss this matter further. Mr. Givens noted that the LAB plans to review the Model in the future to update to recommend any updates they feel are necessary.

Michael Lewis explained that he has been a fishing guide in Lake Lure for many years and that he never received an email or letter stating that there would be a fee if he missed the deadline. He mentioned that he planned to come and pay on the due date but had a medical emergency and had to go to the hospital, noting that he was here the very next day to pay the license fee. The Board felt that this was an exception and an extenuating factor in Mr. Lewis missing the deadline.

Mayor Pro Tem John Moore made a motion to waive the fee. Commissioner John Kilby seconded and the motion carried 4-0.

NEW BUSINESS

B. TOWING RESTRICTIONS FOR FISHING GUIDE PERMITS

Mr. Givens explained that the LAB reviewed this matter a few times and each time they have agreed to continue not allowing fishing guides to tow. He mentioned that LAB felt it could present problems with allowing the commercial category to tow and with enforcing it and wanted to keep the regulations the same. He noted that the commercial boat model will hold seven fishing guides.

Esther Lusk, president of the Lake Lure Lakefront Owners Association, pointed out that fishing guides get discounts on their commercial permits because they tend to use fewer lake hours usually in the early morning and in the evening. She stated that if they were allowed to tow it would significantly change the lake hours that they might use.

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Commissioner Cameron made a motion to support the Lake Advisory Board and keep the policy as written. Commissioner John Kilby seconded and the motion carried 4-0.

NEW BUSINESS

C. APPROVAL OF THE 2019 LAKE COMMERCIAL LICENSES

Mr. Givens presented the 2019 Lake Commercial Licenses noting that all applications received this year were included into the Model. He stated that the LAB reviewed the 2019 Lake Commercial Licenses and recommended approval. Commissioner Webber pointed out two adjustments needed to the Model. He stated that David Butts is no longer the contact for Lurecrest and that John Garse should be changed to John Garle. Mayor Pro Tem mentioned that tour boats get a lot of lake hours in the Model. Mr. Givens stated that the hours can be moved around to other categories if the Board chooses.

Commissioner Bob Cameron made a motion to adopt the 2019 Lake Commercial Licenses as presented. Commissioner Stephen Webber seconded and the motion carried 4-0.

Mr. Givens pointed out that the Commercial Boat Model has been in place for many years and provides good guidelines. He explained that it is created in Excel and takes numerous staff hours to update each year, noting that there is a simpler way to manage the Commercial Boat Model. He stated that the LAB plans to study commercial boat hours further to better the Model. The Board recommended that Mr. Givens and the LAB continue to study the Lake Commercial Model and provide a recommendation to the Board. Commissioner Kilby pointed out that there are still problems with commercial boat operators who rent slips around the lake and are not property owners and are using their boats as boat rentals. He felt there should be a separate permit for vacation rental boats and Mr. Givens stated that he would look into this.

NEW BUSINESS

D. NON-MOTORIZED VESSEL STICKERS

Mr. Givens noted that the LAB reviewed two non-motorized vessel stickers and recommended white stickers with black lettering, with no red lettering. He stated that the stickers would be handed out with non-motorized permits and also for the police to hand out for vessels that do not have them in order to help educate boaters.

Commissioner Bob Cameron made a motion to approve the decal on page 24 of the packet with the red lettering being changed to black. Commissioner Bob Cameron seconded and the motion carried 4-0.

ADJOURNMENT

With no further business, Commissioner Bob Cameron made a motion to adjourn the meeting at 4:49 p.m. Mayor Pro Tem John Moore seconded and the motion carried 4-0.

Michelle Jolley,
Lake Lure Marine Commission Clerk

NEW BUSINESS

LAKE LURE MARINE COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: March 12, 2019

SUBJECT: Resolution No. 19-03-12 - Proposed Amendments to the Lake Use Regulations

AGENDA INFORMATION:

Agenda Location: Public Hearings and New Business
Item Number: A
Department: Lake Operations
Contact: Dean Givens, Lake Operations Director
Presenter: Dean Givens, Lake Operations Director

BRIEF SUMMARY: The Lake Advisory Board held a meeting on February 4, 2019 and discussed amendments to the current Lake Use Regulations. They voted 4-2 in favor of a recommendation to the Marine Commission, to amend the Lake Use Regulations to allow for specialized equipment/vessels for prorated temporary use on the lake for construction purposes. They directed the Marine Commission to review and adopt the proposed changes to the Regulations.

RECOMMENDED MOTION AND REQUESTED ACTIONS: To adopt Resolution No. 19-03-12 amending the Lake Use Regulations.

FUNDING SOURCE: None

ATTACHMENTS: Resolution No. 19-03-12

STAFF'S COMMENTS AND RECOMMENDATIONS: A public hearing is scheduled for the March 12, 2019 Marine Commission meeting for discussion of amendments to the current Lake Use Regulations. Staff recommends approval.

**LAKE LURE MARINE COMMISSION
REQUEST FOR BOARD ACTION**

Meeting Date: March 12, 2019

SUBJECT: Request from Dan Breneman to Appeal a Decision of the Lake Advisory Board

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: B
Department: Parks, Recreation and Lake Department
Contact: Dean Givens, Parks, Recreation and Lake Director
Presenter: Dean Givens, Parks, Recreation and Lake Director

BRIEF SUMMARY: During the March 4th Lake Advisory Board Meeting, Dan Breneman made a request to ask for an appeal of the Lake Advisory Board's decision to not allow any further commercial boat permits into the model until a study is conducted. The Lake Advisory Board referred this appeal to the Marine Commission for review.

RECOMMENDED MOTION AND REQUESTED ACTIONS: To uphold the Lake Advisory Board's recommendation to table late commercial boat permit requests until a study of the model has been completed.

FUNDING SOURCE: n/a

ATTACHMENTS: None

STAFF'S COMMENTS AND RECOMMENDATIONS: The Lake Advisory Board was tasked by the Marine Commission to conduct a study of the Commercial Boat Permit Model before considering any further boat permits into the model. The Board discussed this and tabled to be discussed at a later date, which has not yet occurred.

**LAKE LURE MARINE COMMISSION
REQUEST FOR BOARD ACTION**

Meeting Date: March 12, 2019

SUBJECT: Recommendation from the LAB to allow complimentary boat permits for retirees with the Town of Lake Lure

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: C
Department: Parks, Recreation and Lake
Contact: Dean Givens, Parks, Recreation and Lake Director
Presenter: Dean Givens, Parks, Recreation and Lake Director

BRIEF SUMMARY: Mike Bustle, former Lake Lure Police Chief, asked the Lake Advisory Board to allow employees that have retired from the Town of Lake Lure to receive a complimentary annual boat permit. The Lake Advisory Board discussed and recommended that the Marine Commission allow one complimentary boat permit per calendar year to retirees who have retired with 10+ years with the Town of Lake Lure.

RECOMMENDED MOTION AND REQUESTED ACTIONS: To allow one complimentary boat permit per calendar year to retirees who have retired with 10+ years with the Town of Lake Lure.

FUNDING SOURCE: n/a

ATTACHMENTS: Recommendation email from Mike Bustle, Response email from the Town Attorney

STAFF'S COMMENTS AND RECOMMENDATIONS: Staff recommends approval. During the March 4th LAB meeting, David Diorio questioned if complimentary permits could legally be given to retirees in regards to the Bailey Act of 1989 and suggested checking with the Town Attorney. The Town Attorney stated, via email, that the Bailey Act only involves taxation of state and local vs. federal retirement and that he did not see reason why the Town could or should not offer the permits as a benefit. His email response is attached.

March 3, 2019

Director Dean Givens
Town of Lake Lure
2948 Memorial Highway
Lake Lure, N. C. 28746

Dear Director Givens:

As you are aware, I served the Town of Lake Lure as Police Chief for almost eight years, retiring from the town in April 2006. I then continued to serve as a reserve officer for the town for an additional twelve years, maintaining my official state certification. During this period, it was the policy of the town to provide reserve officers and reserve firemen a complimentary boat permit.

As of 2018, I am fully retired due to health issues and disability. I would much appreciate the continued allowance of a boat permit in order to continue my contacts and service to the the Town of Lake Lure.

Thank you for your consideration and assistance in this matter.

Sincerely,

Charles M. "Mike" Bustle

Dean Givens

From: William Morgan <wcmorganlaw@gmail.com>
Sent: Tuesday, March 5, 2019 5:56 PM
To: Dean Givens
Subject: Re: Retired employees

Dean:

I think Bailey only involves taxation of State and local vs. federal retirement. See the text from an article on it which I am pasting below:

In 1989, the US Supreme Court decided in *Davis v. Michigan Department of Treasury* (489 U.S. 803) that Federal retirees could not be taxed differently than were State retirees. At the time, North Carolina exempted state retirees from being taxed on their retirement benefits, but taxed all other retirement benefits including those of Federal and military retirees. In order to comply with *Davis*, on August 12, 1989, the NC legislature passed Session Law 729 repealing the state employees' exception – which had been written into the state's contracts with its employee unions. In 1998, the NC Supreme Court ruled in *Bailey v. State of North Carolina* (348 N.C. 130) that the state could not tax the retirement benefits of NC state or local government employees who were vested in the retirement plan as of August 12, 1989 – and by the *Davis* decision, could not tax the retirement benefits of Federal government or military retirees who met the same requirements as the state retirees.

As a result of *Bailey* and *Davis*, any Federal, military, or NC state or local government retiree, or beneficiary of such a retiree, who is receiving retirement benefits from the corresponding government plan, and who had at least five years of credited service as of August 12, 1989, is exempt from North Carolina state tax on those retirement benefits. The "Bailey exclusion" also applies to retirement benefits received from NC state 401(k) or 457 plans if the retiree had contributed to the plan, or contracted to contribute to the plan, prior to August 12, 1989. The exclusion does *not* apply to local government 457 plans, nor does it apply to 403(b) annuity plans, nor does it apply to privately contracted retirement plans such as IRAs.

If you are entitled to the Bailey exclusion, you should report the entire amount of the exclusion on line 46 of your NC D-400, and attach a copy of your Form 1099-R to your return to support the claim of exclusion. You do *not* qualify for the \$4000 exclusion on line 47.

Thus, I see not reason why the Town can't or shouldn't offer the permit as a benefit. Things to consider: (1) do former employees who retired with more than 10 years experience get the permit too or is it only going forward? (2) Is it only for their lifetimes or as long as they want it, i.e. can't be bequeathed by will, etc.; (3) if only for life, we need to clearly state such and refer to it as a privilege/benefit and a property right, or something to that effect; (4) perhaps most importantly, we must take care to apply it evenly across the board to all qualifying employees. (5) must the retired employee obtain it every year or could he or she skip a year and then sign back up?

William

On Tue, Mar 5, 2019 at 10:41 AM Dean Givens <loa@townoflakelure.com> wrote:

Hi William,

At last night's Lake Advisory Board meeting, they discussed and recommended to the Marine Commission, to allow employees that retire from the Town of Lake Lure with 10 or more years of service, be allow to receive a

free boat permit each year. A gentlemen attending the meeting thought it was a good idea, but cautioned us to check with our attorney. He stated the "Baily Act of 1989". Could you please look into this and let me know if the town can do this or not.

Thanks-

Dean Givens, CLM

Parks, Recreations & Lake Director

Office 828-625-9983 x 501

Cell 828-460-0623



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